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Attorneys for Complainant Director
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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2011-11
) (Inspection No. 313081887)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,)
)
Complainant,)
) STIPULATION AND SETTLEMENT
vs.) AGREEMENT; EXHIBIT A; APPROVAL
) AND ORDER
WAFFLES OF HAWAII,)
)
Respondent.)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent WAFFLES OF HAWAII ("Respondent") having reached a full and complete
settlement of the above-captioned contested case presently pending before the Hawaii Labor
Relations Board ("Board") stipulate and agree as follows:

On or about February 28, 2011, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 2829 Awaawaloa Street, Suite C, Honolulu, Hawaii 96819.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on April 19, 2011 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,125.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 2829 Awaawaloa Street, Suite C, Honolulu, Hawaii 96819.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The violations and corresponding characterizations as stated in the Citation are affirmed. See Exhibit A.
6. The Director reduces the aggregate penalty from \$1,125.00 to \$787.50 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

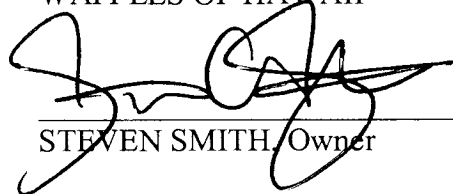
9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, 10-6-2011.


WAFFLES OF HAWAII



STEVEN SMITH, Owner

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



ROBYN M. KUWABE
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii



DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 449

DATED: October 20, 2011



JAMES B. NICHOLSON, Chair



SESNITA A.D. MEOPONO, Member



ROCK LEY, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7006 0100 0005 8250 8507

Citation and Notification of Penalty

To:

Waffles of Hawaii
and its successors
P O Box 30006
Honolulu, HI 96820

Inspection Number: 313081887
Inspection Date(s): 02/28/2011- 02/28/2011
Issuance Date: 04/19/2011
OSHSO ID: T5734
Optional Report No.: 0811
Inspection Type: Complaint
Scope of Inspection: Partial Inspection

Inspection Site:

2829 Awaawaloa St, Suite C
Honolulu, HI 96819

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

JENNIFER SHISHIDO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Waffles of Hawaii
P O Box 30006
Honolulu, HI 96820

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 04/19/2011. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313081887

Inspection Dates: 02/28/2011 - 02/28/2011

Issuance Date: 04/19/2011



Citation and Notification of Penalty

Company Name: Waffles of Hawaii

Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for illness and injury.

Citation 1 Item 1a Type of Violation: Serious

29 CFR 1910.132(d)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not conduct a job hazard analysis for employees working with hazardous chemical products containing ingredients such as sodium hydroxide, acetone, ethyl acetate, methanol, toluene, light aliphatic solvent naphtha, and xylene. Use of these chemical containing products without appropriate personal protective equipment can cause burns to the skin and eyes, dizziness, drowsiness, unconsciousness, respiratory irritation, etc.

29 CFR 1910.132(d)(1) states "The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall: (i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment; (ii) Communicate selection decisions to each affected employee; and, (iii) Select PPE that properly fits each affected employee. Note: Non-mandatory Appendix B contains an example of procedures that would comply with the requirement for a hazard assessment. (2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment."

Location: Establishment

Date By Which Violation Must be Abated:

05/23/2011

Penalty:

\$ 375.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 313081887

Inspection Dates: 02/28/2011 - 02/28/2011

Issuance Date: 04/19/2011



Citation and Notification of Penalty

Company Name: Waffles of Hawaii

Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1910.133(a)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The employer did not ensure that employees who use Zep Industrial Purple Cleaner and Degreaser Concentrate, a product that is a corrosive liquid, used appropriate eye or face protection. Use of corrosive liquids without proper eye or face protection can result in permanent eye damage.

29 CFR 1910.133(a)(1) states "The employer shall ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation."

Location: Establishment

Date By Which Violation Must be Abated:

05/23/2011

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Waffles of Hawaii
Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.151(c) [Refer to chapter 12-62.1, HAR] was violated because:

An emergency eye wash and shower was not provided for employees working with corrosive chemical products (Zep Industrial Purple Cleaner and Degreaser Concentrate). Exposure to corrosive chemical products without an emergency eyewash can lead to permanent eye damage and/or serious chemical burns.

29 CFR 1910.151(c) states "Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

Location: Establishment

Date By Which Violation Must be Abated:	05/23/2011
Penalty:	\$ 375.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Waffles of Hawaii
Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

The alleged violations below (3a, 3b & 3c) have been grouped because they involve similar or related hazards that may increase the potential for illness and injury.

Citation 1 Item 3a Type of Violation: **Serious**

29 CFR 1910.1200(e)(1) [Refer to chapter 12-203.1, HAR] was violated because:

The employer did not create and implement a written hazard communication program for employees working with hazardous chemical products containing ingredients such as sodium hydroxide, acetone, ethyl acetate, methanol, toluene, light aliphatic solvent naphtha, and xylene. Use of these chemical containing products without a hazard communication program can cause employee exposure and result in burns to the skin and eyes, dizziness, drowsiness, unconsciousness, respiratory irritation, etc.

29 CFR 1910.1200(e)(1) states "Employers shall develop, implement, and maintain at each workplace, a written hazard communication program that at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and that also includes the following: (i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and, (ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas."

Location: Establishment

Date By Which Violation Must be Abated:	05/23/2011
Penalty:	\$ 375.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Waffles of Hawaii
Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

Citation 1 Item 3b Type of Violation: **Serious**

29 CFR 1910.1200(g)(1) [Refer to chapter 12-203.1, HAR] was violated because:

The employer did not obtain and maintain Material Safety Data Sheets (MSDS) for chemical products being used in the workplace (i.e. Zep Industrial Purple Cleaner and Degreaser Concentrate, Sunnyside Corp 457 Lacquer Thinner, and Rust-Oleum Specialty High Heat - Bar-B-Que Black). The unavailability of MSDS in a situation where employees become exposed may delay the necessary and appropriate medical treatment needed.

29 CFR 1910.1200(g)(1) states "Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet in the workplace for each hazardous chemical that they use."

Location: Establishment

Date By Which Violation Must be Abated:

05/23/2011

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Waffles of Hawaii
Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819

Citation 1 Item 3c Type of Violation: **Serious**

29 CFR 1910.1200(h)(1) [Refer to chapter 12-203.1, HAR] was violated because:

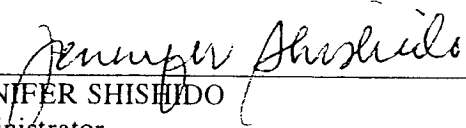
The employer did not provide hazard communication training to employees who work with hazardous chemical products containing ingredients such as sodium hydroxide, acetone, ethyl acetate, methanol, toluene, light aliphatic solvent naphtha, and xylene. Use of these chemical containing products without appropriate training can cause burns to the skin and eyes, dizziness, drowsiness, unconsciousness, respiratory irritation, etc.

29 CFR 1910.1200(h)(1) states "Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and material safety data sheets."

Location: Establishment

Date By Which Violation Must be Abated:

05/23/2011


JENNIFER SHISHIDO
Administrator

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Waffles of Hawaii
Inspection Site: 2829 Awaawaloa St, Suite C, Honolulu, HI 96819
Issuance Date: 04/19/2011

Summary of Penalties for Inspection Number 313081887

Citation 1, Serious	= \$ 1,125.00
TOTAL PENALTIES	= \$ 1,125.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.